

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL REVISION APPLICATION No. 216 of 2007
with
CRIMINAL REVISION APPLICATION NO.217 OF 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

=====

1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

=====

AJAY K. DESAI - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

=====

Appearance :

MR. Y.S.Lakhani for Mr. RAJESH K DESAI for Applicant(s) : 1,
Ms.Archana Raval, A.P.P. for Respondent(s) : 1,

=====

CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 18/07/2007

ORAL JUDGMENT

1. In Revision Application no.216 of 2007,the petitioner-Ajay K. Desai- original accused no.3 has challenged the judgment and order dated 16-3-2007 passed below Exh.5 in Criminal Case

no.1028/1996 whereby the learned Metropolitan Magistrate rejected the discharge application preferred by him whereas in Revision Application no.217 of 2007, the petitioner-Ajay K.Desai-original accused no.3 has challenged the judgment and order dated 16-3-2007 passed below Exh.5 in Criminal Case no.1027/1996 whereby the learned Magistrate rejected the discharge application preferred by him.

1.1 Since the question involved, the facts as also the parties are common in both these Revision Applications, with the consent of the learned Counsel for the parties, the same are taken up together and are being disposed of by this common judgment.

2. In both these applications, it is the case of the prosecution that one Chandrakant Shukla, the Officer of the State Bank of India, lodged two different complaints against the present applicant-original accused no.3 and other accused for the offences under Secs380, 420, 467, 468, 471, 120-B and 114 of the Indian Penal Code before the learned Metropolitan Magistrate, Court no.11, Ahmedabad. The allegation in the said complaints are to the effect that the accused no.1 was the Cashier in the Vansada Branch of the said bank in Valsad District in the year 1981-82 and during that period one book containing 50 drafts were stolen and the accused no.1 with the help of accused no.2 who was working with the Navrangpura Post Office have forged two drafts and have deposited one draft in Naranpura Post Office and another draft in Navragpura Post Office and have purchased Indira Vikas Patra. The allegation

against the present petitioner-accused no.3 is to the effect that he has introduced himself as Mr. Kantilal K.Patel before the said two Post Offices and have encashed two forged drafts by way of purchasing Indira Vikas Patra and thereafter selling them and in that caused loss to the bank to the tune of Rs.5,54,100/-. It is also alleged in the charge-sheet that the present petitioner has destroyed the remaining blank drafts and rubber stamp. The learned Magistrate by his order dated 20-5-2002 forwarded the said complaint to the Police Inspector, Crime Branch under Section 156(3) of the Criminal Procedure Code for investigation which was registered as C.R.no.107/1992 and C.R.no.108/1992. On completion of the investigation, the Investigating Officer filed charge-sheet and the cases were numbered as Criminal Case no.1027/1996 and 1028/1996. The present applicant-original accused no.3, therefore, preferred applications for discharge under Section 239 of the Criminal Procedure Code contending that no prima facie case is made out against him, and hence, he should be discharged from the charges levelled against him. In the meantime, the bank moved applications Exh.5 in both the cases, namely, Criminal Case nos.1027/1996 and 1028/1996.under Section 173(8) of the Criminal Procedure Code for further investigation. The learned Metropolitan Magistrate, Court no.11, Ahmedabad ,after hearing the parties and considering the materials placed before him by his orders dated 16-3-2007 passed in Criminal Cases no.1027/1996 as also in Criminal Case no.1028/1996 rejected both the applications for discharge

made by the present petitioner-original accused no.3 which is the subject matter of challenge in the present Criminal Revision Applications.

3. Heard learned Counsel Mr.Y.S.Lakhani for Mr. Rajesh K.Desai for the petitioner and learned A.P.P. Archana Raval,` for the respondent-State.

4. Learned Counsel Mr. Lakhani for the petitioner-original accused no.3 while assailing the impugned orders dated 16-3-2007 passed by the learned Metropolitan Magistrate, Ahmedabad has submitted that the learned Magistrate has without application of mind decided the discharge applications of the petitioner-original accused no.3 inasmuch as he has not taken into consideration the papers of the charge-sheet , and thereby committed grave error in rejecting the discharge applications of the petitioner-original accused no.3. According to the learned Counsel there is also no evidence with regard to the charge of criminal conspiracy and therefore also the proceedings against the petitioner-accused no.3 ought to have been dropped.

5. On the other hand learned A.P.P. Has supported the impugned judgment and orders passed by the learned Metropolitan Magistrate in toto.

6. This Court has with due care and caution examined the papers of investigation submitted along with the chargesheet. The allegation against the present petitioner-accused no.3 is to the effect that he has introduced himself as Mr. Kantilal K.Patel before

the said two Post Offices and have encashed two forged drafts by way of purchasing Indira Vikas Patra and thereafter selling them and in that caused loss to the bank to the tune of Rs.1,95,000/-.Moreover, there is an allegation in the charge-sheet that the present petitioner-original accused no.3 has destroyed the remaining blank drafts and rubber stamp. It is required to be noted that the present petitioner-accused no.3 is the son of the accused no.1-Karmarsingh Lakhabhai Desai who was working with State Bank of India at the relevant time. In the instant case, there is not an iota of evidence to show that the present petitioner-original accused no.3 and none else had introduced himself as Kantilal K. Patel or that the present petitioner had destroyed the remaining blank drafts and rubber stamp. It is worthwhile to mention here that the name of the present petitioner does not figure in the F.I.R. and there are also no allegations made against the present petitioner therein. There is also nothing on record which could lead this Court to believe that there has been a criminal conspiracy where the present petitioner is a member in connection with crime alleged against him. No evidence whatsoever has been collected by the Investigating Officer which could even remotely suggest that the present petitioner was involved in the crime in question. It is no doubt true that strong suspicion, at the initial stage of framing of charge is sufficient to frame the charge, and the Court has not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction, but in the

present case the trial Court has in a casual manner rejected the application of the petitioner for discharge without taking into consideration the charge-sheet. It is the bounden duty of the trial Court to carefully scan the entire charge-sheet and decide the application of the accused for discharge by giving cogent and convincing reasons. In that view of the matter, there being no evidence to proceed against the applicant-accused no.3 both these applications are liable to be allowed.

7. For the foregoing reasons, both these Criminal Revision Applications are allowed. The judgment and order dated 16-3-2007 passed below Exh.5 in Criminal Case no.1028/1996 by the learned Metropolitan Magistrate, Court no.11, Ahmedabad, rejecting the discharge application of the petitioner- original accused no.3 as also the judgment and order dated 16-3-2007 passed below Exh.5 in Criminal Case no.1027/1996 by the learned Metropolitan Magistrate, Court no.11, Ahmedabad, rejecting the discharge application of the petitioner-accused no.3 are hereby quashed and set aside. Rule is made absolute accordingly.

(M.D.ShahJ.)